



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, FEBRUARY 14, 2017

The Council of the City of San José convened in Regular Session at 9:35 a.m. in the Council Chamber at City Hall.

Present: Council Members - Diep, Jones, Jimenez, Peralez, Carrasco, Davis, Nguyen, Arenas, Rocha, Khamis; Liccardo.

Absent: Council Members - All Present.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no report.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:40 p.m. to a Closed Session in Room W133; (A) to confer with Legal Counsel pursuant to subsection (c) of Section 54956.9 of the Government Code with respect to anticipated litigation in three (3) matters; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation; (1) In re: City of Santa Clara v. City of San José; Names Of Partie(s) Involved: City of Santa Clara, City of San José, San José City Council, Does I through X; Federal Realty and Investment Trust and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 16-CIV-302300; Amount of Money or Other Relief Sought: Damages according to proof; (2) City of San José v. City of Santa Clara; Names Of Partie(s) Involved: City of San José, City of Santa Clara; Court: Superior Court of California, County of San Mateo; Case No.: 16-CIV-02303; Amount of Money or Other Relief Sought: Damages according to proof; (3) Smithson v. City of San José, et al.; Court: Superior Court of California, County of Santa Clara; Case No.: 1-15-CV-285580; Amount of Money or Other Relief Sought: Damages according to proof; (4) IFPTE Local 21 v. City of San José; Names of Partie(s) Involved: International Federation of Professional and Technical Engineers Local 21, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-996-M; Amount of Money or Other

CLOSED SESSION (Cont'd.)

Relief Sought: Damages According to Proof; (5) American Federation of State, County & Municipal Employees, et al. v. City; Names of Partie(s) Involved: American Federation of State, County & Municipal Employees, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages According to Proof; (6) OE#3 v. City of San José; Names Of Partie(s) Involved: Operating Engineers Local Union No. 3, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-900-M; (7) ABMEI v. City, et al.; Names of Partie(s) Involved: Association of Building, Mechanical and Electrical Inspectors, City of San José; Court: State of CA Public Employment Relations Board; Case No.: UPC SF CE 1358 M; Amount of Money or Other Relief Sought: Damages According to Proof; (8) San José Retired Employees Association, et al. v. City, et al; Names of Parties Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 – 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-233660; H040979; H042074; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (9) Sapien, et al. v. City of San José, et al; Names of Parties Involved: Robert Sapien, Marty Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, Does 1-15, The Board of Administration for the 1961 San José Police and Fire Department Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (10) Harris, et al. v. City of San José, et al; Names of Parties Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226570; Amount of Money or Other Relief Sought: Challenge to Measure B. (11) Mukhar, et al. v. City of San José, et al; Names of Parties Involved: City of San José, John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226574; H040979; H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (12) AFSCME, et al. v. City of San José, et al; Names of Parties Involved: American Federation of State, County and Municipal Employees, Local 101 on behalf of its members, City of San José, The Board of Administration for the Federated City Employees' Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-225928; H040979; H042074; Amount of Money or Other Relief Sought: Challenge to Measure B; (13) People of the State of California, et al. v. City of San José, et al.; Names of Partie(s) Involved: The People of the State of California ex rel. San José Police Officers Association, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-245503; Amount

CLOSED SESSION (Cont'd.)

of Money or Other Relief Sought: Verified Complaint In Quo Warranto; (14) Peter Constant, Steven Haug and Silicon Valley Taxpayers' Association v. Superior Court; Names Of Partie(s) Involved: Peter Constant, Steven Haug, Silicon Valley Taxpayers' Association, a California non-profit Corporation, Proposed Intervenors, Appellants and Petitioners, Superior Court of California, County of Santa Clara, Respondent, the People of the State of California ex. Rel. San José Police Officers Association, Plaintiff, Respondent and Real Party in Interest, City of San José, City Council of San José, Defendants, Respondents and Real Parties in Interest; Court: Sixth District Court of Appeal; Case No.: H043540; Amount of Money or Other Relief Sought: Petition for Writ of Mandate or, In the Alternative, Supersedeas, or Other Appropriate Relief; (15) San José Retired Employees Association, et al. v. City of San José, et al; Names of Partie(s) Involved: San José Retired Employees Association, Kirk Pennington, David Armstrong, Donna Jewett, Dorothy McGinley, City of San José, the Board of Administration for the Federated City Employees Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-14-CV-268085; Amount of Money or Other Relief Sought: Change to City medical plan; (C) to Confer with Labor Negotiator Pursuant to Government Code Section 54957.6: City Negotiator: Jennifer Schembri, Director of Employee Relations; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc.; Name of

CLOSED SESSION (Cont'd.)

Existing Wages Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:45 p.m. and reconvened to Regular Session at 1:30 p.m. in the Council Chambers.

Present: Councilmembers - Diep, Jones, Jimenez, Peralez, Carrasco, Davis, Nguyen, Arenas, Rocha, Khamis; Liccardo.

Absent: Councilmembers - All Present.

INVOCATION

Ahmad Salman, Regional Missionary Northern California, Ahmadiyya Muslim Community USA Member, Muslim Writers Guild America Bay Point, provided the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Sam Liccardo led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Donald Rocha and carried unanimously, the Orders of the Day and the Amended Agenda were approved.

1. CEREMONIAL ITEMS

1.1 Presentation of a commendation to Truong Thi Thinh for more than 20 years of dedication and passion for the arts. (Nguyen)

Mayor Sam Liccardo and Councilmember Tam Nguyen presented a commendation to Truong Thi Thinh for more than 20 years of dedication and passion for the arts, including her efforts to lead the next generation to pursue their passion for the arts.

Heard in the evening.

2. CONSENT CALENDAR

Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Sergio Jimenez and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

2.1 Approval of City Council Minutes.

(a) Regular Minutes of December 6, 2016.

CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.

Documents Filed: Regular Council Minutes of December 6, 2016.

Action: The Minutes of the City Council were approved. (11-0.)

2.2 Final Adoption of Ordinances.

- (a) ORD. NO. 29873 – An ordinance of the City of San José granting a Commercial Solid Waste and Recyclables Collection Franchise to Sergio Barajas DBA Bay Area Dumpsters. CEQA: Exempt, File No. PP08-228, CEQA Section 15308 Actions by Regulatory Agencies for Protection of the Environment. (Environmental Services)**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29873 executed on February 7, 2017, submitted by the City Clerk.

Action: Ordinance No. 29873 was adopted. (11-0.)

- (b) ORD. NO. 29874 – An ordinance of the City of San José granting a Commercial Solid Waste and Recyclables Collection Franchise to Francisco Toca DBA Toca Debris Box. CEQA: Exempt, File No. PP08-228, CEQA Section 15308 Actions by Regulatory Agencies for Protection of the Environment. (Environmental Services)**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29874 executed on February 7, 2017, submitted by the City Clerk.

Action: Ordinance No. 29874 was adopted. (11-0.)

2.3 (a) Rules and Open Government Committee Minutes of January 18, 2017.

- (b) Rules and Open Government Committee Minutes of January 25, 2017. (Mayor)
CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.**

Documents Filed: Rules and Open Government Committee Minutes dated January 18, 2017 and January 25 2017.

Action: The Council Committee Minutes were accepted. (11-0.)

2. CONSENT CALENDAR

2.4 Mayor and Council Excused Absence Requests.

None provided.

2.5 City Council Travel Reports.

None provided.

2.6 Authorize travel for City Manager Norberto L. Dueñas to Miami, Florida on January 18 – 21, 2017 to participate in the Large Cities Executive Forum. Source of Funds: City Manager's Non Personal Services Appropriation. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (City Manager)

Documents Filed: Memorandum from City Manager Norberto Dueñas, dated December 15, 2016, requesting travel authorization.

Action: Travel for City Manager Norberto L. Dueñas to Miami, Florida on January 18 – 21, 2017 to participate in the Large Cities Executive Forum was approved. (10-1. Absent: Diep.)

2.7 Adopt a resolution authorizing the City Manager or designee to negotiate and execute an Agreement with Price Waterhouse Coopers (PwC) to provide digital inclusion and broadband strategy consulting services from February 15, 2017 through December 31, 2017, for an amount not to exceed \$315,000. CEQA: Exempt, File No. PP10-066(d), Agreements and Contracts, Consultant Services. (City Manager)

Renumbered to Item 3.5

See Item 3.5 for Action taken.

2.8 Approve an ordinance repealing Section 3.04.490 of Chapter 3.04, amending various sections of Chapters 3.32, 3.36 and 3.44 and adding a new Chapter 3.57 in Title 3 of the San José Municipal Code to implement revisions for the pension and retiree healthcare plans for members of the City of San José Police and Fire Department Retirement Plan. CEQA: Not a Project; PP10-068(b), Municipal Code or Policy.

Documents Filed: Memorandum from Director of Employee Relations, Jennifer Schembri, dated February 3, 2017, recommending approval of an ordinance.

Action: Ordinance No. 29879, entitled “An Ordinance of the City of San José Repealing Section 3.04.490 Of Chapter 3.04, Adding a New Chapter 3.57, and Amending Various Sections of Chapters 3.32, 3.36 and 3.44 of Title 3 of the San José Municipal Code, to Implement the Terms of the Alternative Pension Reform Settlement Framework Agreement with the San Jose Police Officers' Association and International Association of Fire Fighters, Local 230”, was passed for publication. (11-0.)

- 2.9 Adopt a resolution authorizing the City Manager to execute the Fifth Amendment to the Agreement with Schindler Elevator Corporation (San Leandro, CA) for Elevator and Escalator Maintenance Services at the Airport, to add one additional one-year option to extend the term from June 30, 2017 through June 30, 2018, under the same terms and conditions, at a maximum annual compensation of \$344,033, subject to the annual appropriation of funds. CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. (Finance)**

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper, dated February 14, 2017, recommending adoption of a resolution.

Action: Resolution No. 78084, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the Fifth Amendment to the Agreement with Schindler Elevator Corporation for Elevator and Escalator Maintenance Services at the San José Mineta International Airport, to Add One Additional One-Year Option to Extend the Term from June 30, 2017 through June 30, 2018, Under the Same Terms and Conditions, at a Maximum Annual Compensation of \$344,033, Subject to the Annual Appropriation of Funds", was adopted. (11-0.)

- 2.10 Adopt a resolution authorizing the City Manager to:**
- (a) Execute the Sixth Amendment to the Master License and Service Agreement with Coresite Real Estate 55 S. Market Street, LLC (Denver, CO) to align the term of space licenses and extend the term of the Agreement through January 11, 2020, at a maximum compensation of \$74,393 for the first twelve months, with subsequent annual price adjustments capped at 3% a year, subject to the annual appropriation of funds; and**
 - (b) Negotiate and execute amendments, change orders, to cover any unanticipated changes to the City's requirements, and extend the term of the Agreement for ongoing license fees and services after January 11, 2020 with price adjustments capped at 3% a year, subject to the appropriation of funds.**
- CEQA: Not a Project, File No. PP10-066(e), Agreements and Contracts, Services that involve no physical changes to the environment. (Finance)**

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper, dated February 14, 2017, recommending adoption of a resolution.

Action: Resolution No. 78085, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the Sixth Amendment to the Master License and Service Agreement with Coresite Real Estate 55 S. Market Street, LLC, Negotiate and Execute Additional Amendments and Change Orders, and Extend the Term of the Agreement for Ongoing License Fees and Services, Subject to the Appropriation of Funds", was adopted. (11-0.)

- 2.11 Adopt a resolution to amend the City of San José Pay Plan effective February 14, 2017, to create the Police Forensic Analyst I/II (7667/7668) classification with a salary range of \$65,166.40 – \$79,248.00 (I) and \$71,115.20 – \$86,444.80 (II) annually. CEQA: Not a Project, File No. PP10-068(b), General Procedure & Policy Making, Municipal Code or Policy. (Human Resources)**

Documents Filed: Memorandum from Director of Human Resources, Joe Angelo, dated January 23, 2017, recommending adoption of a resolution.

Action: Resolution No. 78086, entitled: “A Resolution of the Council of the City of San José Amending the City of San José Pay Plan for Various Job Classifications”, was adopted. (11-0.)

- 2.12 Appoint Ed Overton as the Interim Retiree Board Member to the Board of Administration of the City of San José Federated City Employees Retirement System until a successor is appointed by the City Council. CEQA: Not a Project, File No. PP10-069, City Administrative Activities. (Retirement Services)**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated February 3, 2017, addressing the City’s option to appoint Ed Overton as an interim member of the Board for the City of San José Federated City Employees Retirement Plan. (2) Letter from Matt Loesch, P.E., Chair, Federated City Employees Retirement System, dated January 27, 2017, encouraging the appointment of Ed Overton.

Action: Ed Overton was appointed as the Interim Retiree Board Member to the Board of Administration of the City of San José Federated City Employees Retirement System until a successor is appointed by the City Council.

END OF CONSENT CALENDAR

3. STRATEGIC SUPPORT SERVICES

- 3.3 (a) Approve the 2016-2017 Mid-Year Budget Review Report.**
(b) Adopt related Appropriation Ordinance and Funding Sources Resolution amendments in various funds as detailed in Section III (Recommended Budget Adjustments and Clean-Up Actions) of the 2016-2017 Mid-Year Budget Review Report.

CEQA: Not a Project, File No. PP10-069(a), City Administrative Activities, Staff Reports that involve no approvals of any City Actions and File No. PP10-067(b), Non-Project Specific Funding Mechanism, Appropriation Ordinance. (City Manager)

Documents Filed: Mid-Year Budget Review, 2016-2017, transmitted by Senior Deputy City Manager/Budget Director Jennifer Maguire, dated January 31, 2017, recommending adoption of an appropriation ordinance and funding sources resolution amendments.

3.3 (Cont'd.)

Senior Deputy City Manager/Budget Director Jennifer Maguire offered a presentation on the Mid-Year Budget Review. Deputy Director, Parks, Recreation and Neighborhood Services, Marybeth Harasz and Director of Parks, Recreation and Neighborhood Services Angel Rios, Jr. responded to questions and offered clarification.

Motion: Councilmember Raul Peralez moved approval of the report, including a 50-50 split for the upgrades for the D10 Almaden Lake Park Playground Improvements, with \$75,000 from the District 10 budget and \$75,000 to be moved from the Citywide ending fund balance. Councilmember Johnny Khamis seconded the motion.

Action: On a call for the question, Ordinance No. 29880, entitled “An Ordinance of the City of San José Amending Ordinance No. 29762 to Appropriate Moneys in the General Fund and Various Special and Capital Funds; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 78087, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 77796 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2016-2017 to Adjust Revenues in the General Fund and Various Special and Capital Funds”, was adopted, with a 50-50 split for the upgrades for the D10 Almaden Lake Park Playground Improvements, with \$75,000 from the District 10 budget and \$75,000 to be moved from the Citywide ending fund balance. (11-0.)

3.4 Accept the following annual reports:

- (a) **Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Years ended June 30, 2016 and June 30, 2015; and**
 - (b) **Federated City Employees’ Retirement System Comprehensive Annual Financial Report for the Fiscal Years ended June 30, 2016 and June 30, 2015.**
- CEQA: Not a Project, File No. PP10-069(a), City Administrative Activities, Annual Reports that involve no approvals of any City Actions. (Retirement Services)**

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated February 14, 2017, providing recommendations to the City Auditor’s workplan. (2) City of San José Police and Fire Department Retirement Plan, Comprehensive Annual Financial Report for FY ended June 30, 2016 and June 30, 2015, and City of San José Federated City Employees’ Retirement System Comprehensive Annual Financial Report for FY ended June 30, 2016 and June 30, 2015 provided by the office of Director of Retirement Services Roberto Peña.

Director of Retirement Services Roberto Peña and Chief Investment Officer Arne Andrews, offered a presentation and responded to questions from Council.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Johnny Khamis and carried unanimously, the Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Years ended June 30, 2016 and June 30, 2015; and the Federated City Employees’ Retirement System Comprehensive Annual Financial Report for the Fiscal Years ended June 30, 2016 and June 30, 2015, were approved. (10-0-1. Absent: Carrasco.)

- 3.5 Adopt a resolution authorizing the City Manager or designee to negotiate and execute an Agreement with Price Waterhouse Coopers (PwC) to provide digital inclusion and broadband strategy consulting services from February 15, 2017 through December 31, 2017, for an amount not to exceed \$315,000. CEQA: Exempt, File No. PP10-066(d), Agreements and Contracts, Consultant Services. (City Manager)**

Note: Renumbered from Item 2.7

Documents Filed: (1) Memorandum from Deputy City Manager, Civic Innovation and Digital Strategy, Kip Harkness, dated February 2, 2017, recommending adoption of a resolution. (2) Statement and Declaration of Conflict of Interest Form from Councilmember Donald Rocha, dated June 6, 2017, indicating a conflict of interest since his domestic partner is an employee of Price Waterhouse Coopers.

Councilmember Donald Rocha abstained due to a conflict of interest.

Deputy City Manager, Civic Innovation & Digital Strategy, Kip Harkness and staff provided a presentation.

Motion: Councilmember Chappie Jones moved approval of the Agreement with Price Waterhouse Coopers (PwC), with additional direction as included in “Action” below. Councilmember Lan Diep seconded the motion.

Action: On a call for the question, Resolution No. 78088, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Negotiate and Execute an Agreement with Price Waterhouse Coopers to Provide Digital Inclusion and Broadband Strategy Consulting Services from February 15, 2017 through December 31, 2017 for an Amount not to exceed \$315,000”, was adopted, with direction to have Price Waterhouse Coopers (PwC) scrutinize sources of funding beyond the General Fund. (9-0-1-1. Absent: Jimenez. Abstain: Rocha.)

4. COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 As recommended by the Community and Economic Development Committee on January 23, 2017, accept the report and approve an ordinance to:**
- (a) Amend Title 4 of the San José Municipal Code to create a temporary partial suspension from the Commercial-Residential-Mobilehome Park Building Tax (SJMC 4.47) to achieve a rate of 1% for the following uses:**
 - (1) Office, General Business (SJMC 20.200.813)**
 - (2) Office, Research and Development (SJMC 20.200.818)**
 - (3) Data Center (SJMC 20.200.265) to allow the City Council the flexibility to review the uses included and verify that these sectors are being accurately represented this provision shall sunset March 31, 2022.**

4.1 (Cont'd.)

- (b) Amend Section 4.82.320 of Chapter 4.82 of Title 4 of the San José Municipal Code to authorize the City Manager or designee to compromise or settle tax refund claims for amounts between fifty thousand dollars (\$50,000.00) and a threshold to be determined by the City Council in its consideration of the proposed ordinance, with the written approval of the City Attorney.**

CEQA: Not a Project, File No. PP10-067(a), Non-Project Funding Mechanism, Increase of Adjustment to Fees, Rates & Fares. (Economic Development)

Action: Deferred to February 28, 2017 per Rules Committee.

5. NEIGHBORHOOD SERVICES

- 5.1 As recommended by the Public Safety, Finance, and Strategic Support Committee on December 15, 2016, accept the 2015-2016 Annual Report on the Anti-Graffiti and Anti-Litter Programs. CEQA: Not a Project, File No. PP10-069(a), City Administrative Activities, Annual Reports that involve no approval of any City Actions. (Parks, Recreation and Neighborhood Services)**

[Public Safety, Finance, and Strategic Support Committee referral 12/15/17 – Item (d)(3)]

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco, Councilmember Johnny Khamis, Councilmember Tam Nguyen and Councilmember Raul Peralez, dated February 10, 2017, recommending acceptance of the report with additional direction. (2) Memorandum from City Clerk Toni J. Taber, CMC, dated February 2, 2017, providing recommendations of the Public Safety, Finance & Strategic Support Committee.

Public Comments: Blair Beekman encouraged community involvement.

Director of Cultural Affairs/Deputy Director Economic Development, Kerry Adams Hapner and Director of Parks, Recreation and Neighborhood Services Angel Rios, Jr. offered a presentation and responded to questions.

Heard jointly with Item 7.1

See Item 7.1 for Action.

6. TRANSPORTATION & AVIATION SERVICES

- 6.1 Approve an Agreement with Fugro Roadware, Inc., for engineering consultant services to perform pavement condition and curb ramp assessments on the City's street network. The Agreement is for a one-year contract not to exceed \$1,250,000 with the option for five one-year extensions, for a total compensation amount not to exceed \$2,250,000 over six years. CEQA: Not a Project, File No. PP10-066(d), Agreements and Contracts, Consultant Services. (Transportation)**

(Deferred from 2/7/17 – Item 6.1)

Note: Heard First Immediately After Consent

Documents Filed: Memorandum from Director of Transportation Jim Ortbal, dated January 17, 2017, recommending approval of an agreement.

Action: Upon motion by Councilmember Tam Nguyen, seconded by Councilmember Johnny Khamis and carried unanimously, an Agreement with Fugro Roadware, Inc., for engineering consultant services to perform pavement condition and curb ramp assessments on the City's street network. The Agreement is for a one-year contract not to exceed \$1,250,000 with the option for five one-year extensions, for a total compensation amount not to exceed \$2,250,000 over six years, was approved. (11-0.)

7. ENVIRONMENTAL & UTILITY SERVICES

- 7.1 As recommended by the Transportation and Environment Committee on December 5, 2016, accept a status report on the City's illegal dumping mitigation efforts. CEQA: Not a Project, File No. PP10-069(a), City Administrative Activities, Annual Reports that involve no approval of any City Actions. (Environmental Services)**
[Transportation and Environment Committee referral 12/5/16 – Item (d)(4)]
(Deferred from 1/24/17 – Item 7.1)

Note: Heard Jointly with Item 5.1

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco, Councilmember Johnny Khamis, Councilmember Raul Peralez and Councilmember Tam Nguyen, dated February 10, 2017, recommending acceptance of the report to additional direction. (2) Memorandum from City Clerk Toni J. Taber, CMC, dated February 2, 2017, providing recommendations of the Transportation and Environment Committee. (4) Supplemental memorandum from Director, Environmental Services, Kerrie Romanow and Director, Planning, Building and Code Enforcement Harry Freitas, dated February 10, 2017 providing updated initiative information.

Motion: Councilmember Johnny Khamis moved the memorandum he cosigned with Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco and Councilmember Tam Nguyen and Councilmember Raul Peralez, dated February 10, 2017. Councilmember Tam Nguyen seconded the motion.

7.1 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, and the status report and 2015-2016 Annual Report on the Anti-Graffiti and Anti-Litter Programs were accepted, including the joint memorandum from Mayor Liccardo, Vice Mayor Carrasco and Councilmembers Khamis, Nguyen and Peralez, dated February 10, 2017 to direct the City Manager to: (A) Include a proposed ordinance change on the upcoming Council priority setting session that will allow staff to warn private property owners to abate graffiti on their property within 72 hours, or the City will abate and bill the owner; (B) Collaborate with BART, VTA and other jurisdictions along the BART corridor to share information and develop a strategy for increased communication and knowledge sharing on graffiti issues in anticipation of the BART system expansion opening; (C) Explore more options to use technology to help detect and report incidents of graffiti, such as devices that sense spray paint being used and will automatically alert law enforcement; (D) Expedite the hiring of unfilled FTE's associated with volunteer support services in the Adopt-A-Park and Anti-Graffiti/ Anti-Litter programs; and (E) Return to the Public Safety Finance & Strategic Support Committee and the Neighborhoods Commission in the Fall of 2017 with an update. (11-0.)

7.2 **Report on bids and award of contract for the 8359 – Sanitary Sewer Repairs 2016-17 Package III project to the low bidder, Nor-Cal Pipeline Services, in the amount of \$1,567,584 and approve a ten percent contingency in the amount of \$156,758. CEQA: Exempt, File No. PP17-017, CEQA Guidelines Section 15301, Existing Facilities. Council Districts 1, 3, 6 and 9. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Barry Ng, dated January 17, 2017, recommending acceptance of the report on bids and award of a contract.

Action: Upon motion by Councilmember Chappie Jones, seconded by Councilmember Tam Nguyen and carried unanimously, the report on bids and award of contract for the 8359 – Sanitary Sewer Repairs 2016-17 Package III project to the low bidder, Nor-Cal Pipeline Services, in the amount of \$1,567,584 with related contingencies, was approved. (11-0.)

7.3 **Report on bids and award of contract for the 8303 – Cast Iron Replacement FY 16-17 Package I Project to the low bidder, Casey Construction, in the amount of \$1,681,976 and approval of a ten percent contingency in the amount of \$168,198. CEQA: Exempt, File No. PP17-018, CEQA Guidelines Section 15301, Existing Facilities. Council Districts 2, 5, and 7. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Barry Ng, dated January 17, 2017, recommending acceptance of the report on bids and award of a contract.

Action: Upon motion by Councilmember Chappie Jones, seconded by Councilmember Tam Nguyen and carried unanimously, the report on bids and award of contract for the 8359 – Sanitary Sewer Repairs 2016-17 Package III project to the low bidder, Nor-Cal Pipeline Services, in the amount of \$1,567,584 with related contingencies, was approved. (11-0.)

8. PUBLIC SAFETY SERVICES

8.1 Adopt a resolution authorizing the City Manager to:

- (a) Execute an Agreement between the City of San José and the South Bay Regional Public Safety Training Consortium for the provision of registration, instruction and clerical support services for academy training for the San José Police Department, for \$500,000 for the period of June 1, 2016, through May 31, 2017;**
- (b) Execute four additional annual renewal options with the total amount of compensation for the entire contract not to exceed \$2,500,000, subject to the appropriations of funds.**

**CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. (Police)
(Deferred from 2/7/17 – Item 8.1)**

Action: Deferred February 28, 2017 per Council Action.

9. REDEVELOPMENT – SUCCESSOR AGENCY

9.1 Successor Agency Board approve the Purchase and Sale and Assignment Agreement and Escrow Instructions between the Successor Agency to the Redevelopment Agency of the City of San José, as seller and J3 Inc. as buyer to allow the sale of the Revenue Participation Interest in the Paseo Retail, LLC located at 140 East San Fernando Street for the purchase price of \$99,000. CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. Council District 3. (Successor Agency)

Documents Filed: Memorandum from Successor Agency Managing Director, Richard Keit, dated February 1, 2017, recommending approval of an Agreement.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Raul Peralez and carried unanimously, the Purchase and Sale and Assignment Agreement and Escrow Instructions between the Successor Agency to the Redevelopment Agency of the City of San José, as seller and J3 Inc. as buyer to allow the sale of the Revenue Participation Interest in the Paseo Retail, LLC located at 140 East San Fernando Street for the purchase price of \$99,000, was approved. (10-0-1. Absent: Nguyen.)

9.2 Successor Agency Board approve the Purchase and Sale Agreement and Escrow Instructions between the Successor Agency to the Redevelopment Agency of the City of San José, as seller and Batista S. Vieira and Dolores M. Vieira trustee under the Batista S. Vieira and Dolores M. Vieira Revocable Living Trust as buyer to allow the sale of 30 Eastwood Court for a purchase price of \$88,250. CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. Council District 3. (Successor Agency)

9.2 (Cont'd.)

Documents Filed: (1) Memorandum from Successor Agency Managing Director, Richard Keit, dated February 1, 2017, recommending approval of an Agreement. (2) Supplemental memorandum from Successor Agency Managing Director, Richard Keit, dated February 14, 2017, providing actions taken by the Oversight Board.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Raul Peralez and carried unanimously, the Purchase and Sale Agreement and Escrow Instructions between the Successor Agency to the Redevelopment Agency of the City of San José, as seller and Batista S. Vieira and Dolores M. Vieira trustee under the Batista S. Vieira and Dolores M. Vieira Revocable Living Trust as buyer to allow the sale of 30 Eastwood Court for a purchase price of \$88,250, was approved. (10-0-1. Absent: Nguyen.)

9.3 **Successor Agency Board approve the Purchase and Sale and Assignment Agreement and Escrow Instructions between the Successor Agency to the Redevelopment Agency of the City of San José, as seller, and County of Santa Clara, as buyer, to allow the sale of the Revenue Participation Interest in the Marriott Hotel located at 301 South Market Street for the appraised value of \$12,350,000. CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. Council District 3. (Successor Agency)**

Documents Filed: (1) Memorandum from Successor Agency Managing Director, Richard Keit, dated February 3, 2017, recommending approval of an Agreement. (2) Supplemental memorandum from Successor Agency Managing Director, Richard Keit, dated February 10, 2017, providing actions taken by the Oversight Board on February 9, 2017.

Councilmember Johnny Khamis shared his opinion that a higher bid could be obtained. Deputy City Manager Dave Sykes responded that the City is still undertaking a bidding process.

Action: Upon motion by Councilmember Donald Rocha, seconded by Councilmember Raul Peralez and carried, the Purchase and Sale and Assignment Agreement and Escrow Instructions between the Successor Agency to the Redevelopment Agency of the City of San José, as seller, and County of Santa Clara, as buyer, to allow the sale of the Revenue Participation Interest in the Marriott Hotel located at 301 South Market Street for the appraised value of \$12,350,000, was approved. (9-1-1. Noes: Khamis, Liccardo. Absent: Nguyen.)

ADJOURNMENT

Mayor Sam Liccardo adjourned the Afternoon Council Session at 5:34 p.m.

RECESS/RECONVENE

The City Council recessed at 5:34 p.m. from the afternoon Council Session and reconvened at 6:31 p.m. in the Council Chambers, City Hall.

Present: Council Members - Diep, Jones, Jimenez, Peralez, Carrasco, Davis, Nguyen, Arenas, Rocha, Khamis; Liccardo.

Absent: Council Members - All Present.

City Clerk Toni J. Taber, CMC read the requests for continuance of the applications. Upon motion by Vice Mayor Magdalena Carrasco, seconded by Councilmember Johnny Khamis, and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

10. GENERAL PLAN PUBLIC HEARINGS

No General Plan Public Hearings.

11. PUBLIC HEARINGS

11.1 Public Hearings on Consent Calendar.

No Public Hearings on Consent Calendar.

11.2 Rehearing and Reconsideration of the Appeal of the Planning Commission's Approval of a Conditional Use Permit for Real Property Located at the 58 South 1st Street.

- (a) Adopt a resolution repealing Resolution No. 77970 granting the Appeal of the Planning Commission's approval of a Conditional Use Permit to allow late night use for a public drinking establishment in an existing 8,684-square foot building on an approximately 0.15-gross acre site, in the DC Downtown Primary Commercial Zoning District, approximately 400 feet southerly of East Santa Clara Street (58 South 1st Street) (Martin Trust, Owner).
- (b) Consider the statutory exemption pursuant to CEQA Guideline Section 15301(a) for Existing Facilities.
- (c) Conduct an Administrative Hearing on and reconsider an Appeal of the Planning Commission's approval of a Conditional Use Permit to allow late night use for a public drinking establishment in an existing 8,684-square foot building on an approximately 0.15-gross acre site, in the DC Downtown Primary Commercial Zoning District, approximately 400 feet southerly of East Santa Clara Street (58 South 1st Street) (Martin Trust, Owner).

11.2 (Cont'd.)

- (d) **Adopt a resolution and make the required findings to either grant or deny the appeal for a Conditional Use Permit to allow late night use for a public drinking establishment in an existing 8,684-square foot building on an approximately 0.15-gross acre site, in the DC Downtown Primary Commercial Zoning District, approximately 400 feet southerly of East Santa Clara Street (58 South 1st Street) (Martin Trust, Owner).**
CEQA: Exempt, File No. CP16-005, CEQA Guidelines Section 15301(a), Existing Facilities. (Planning, Building and Code Enforcement)
CP16-005 – Council District 3

Documents Filed: (1) Memorandum from Councilmember Johnny Khamis, dated February 10, 2017, providing a record of prior deliberations for new members of the Council. (2) Memorandum from Planning, Building and Code Enforcement Director, Harry Freitas, dated January 31, 2017, providing the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP16-005 dated October 5, 2016. (3) Memorandum from Planning Commission Secretary Harry Freitas, dated October 5, 2016, transmitting the Planning Commission recommendation. (4) Supplemental memorandum from City Attorney Richard Doyle, dated February 1, 2017, providing information regarding the repeal of Resolution No. 77970. (5) Proof of Publication of Notice of Public Hearing, executed on January 27, 2017, submitted by the City Clerk. (5) Correspondence from the following, offering support to approval of the Conditional Use Permit, were Jenny Wolfe, dated February 11, 2017; Tackett Mull LLP, Eladio Serna, Bernard Kotansky and Linda Phi, dated February 14, 2017; Peter Aguilar, dated January 15, 2016; Ellen Prandi, dated October 19, 2015; David Silberstein, dated December 8, 2015, Otto Lee, Intellectual Property Law Group, LLP, dated January 22, 2016; Hong Thoa Pham, dated December 28, 2015, and a petition of support signed by twenty community members. One letter of opposition from George Lahlouh, co-owner of Paper Plane.

Mayor Sam Liccardo opened the Administrative Hearing.

Jay Ross, Hopkins and Carley, Appellant, urged the Council to oppose the application.

George W.M. Mull, Esquire, Tackett Mull LLP, representing the Applicant, stated that the Applicant has addressed all the concerns of the Council and urged the Council to grant the Conditional Use Permit.

Public Comments: Expressing support to approving the Conditional Use Permit were: Johnny Lee, Sean Adamson, Randy Uighe, David Silberstein and Thai Nguyen. Presenting views of opposition were Eric Nielsen, Tin Le, Temple Bar; George Lahlouh and Ryan Melchiano.

Mayor Sam Liccardo closed the Administrative Hearing.

11.2 (Cont'd.)

Each Councilmember and the Mayor offered meeting disclosures with both the applicant and the law firm appealing the Conditional Use Permit.

Planning, Building and Code Enforcement Director, Harry Freitas introduced the proposal and offered background from the previous hearing.

Motion: Councilmember Raul Peralez moved approval to rescind the last hearing, dated November 1, 2016, allowing Council to rehear and reconsider the appeal of the application for Conditional Use Permit. Councilmember Tam Nguyen seconded the motion.

Action: On a call for the question, the motion carried unanimously, and the last hearing, dated November 1, 2016, was rescinded. (11-0.)

Council discussion ensued.

Motion: Councilmember Raul Peralez moved to uphold the Appeal and deny approval of a late night use for a public drinking establishment located at 58 South 1st Street. Vice Mayor Magdalena Carrasco seconded the motion.

Councilmember Johnny Khamis moved a substitute motion approving the Conditional Use Permit to Allow Late Night Use for a Public Drinking Establishment. Councilmember Dev Davis seconded the motion.

Councilmember Raul Peralez requested a friendly amendment to the motion, to include that a full-meal service must be available during all times that the premises are exercising the privileges of its A.B.C. license. Councilmembers Khamis and Davis accepted the friendly amendment.

Extensive Council discussion followed, and representatives of the Applicant responded to questions.

Action: On a call for the question, the substitute motion carried, and Resolution No. 78089, a entitled: "A Resolution of the Council of the City of San José Repealing Council Resolution No. 77970 Adopted On November 1, 2016, Denying the Conditional Use Permit to Allow Late Night Use for a Public Drinking Establishment in an Existing 8,684-Square Foot building in the DC Downtown Primary Commercial Zoning District on an Approximately 0.15-Gross Acre Site, Located on the East Side of South 1st Street, Approximately 400 feet Southerly of East Santa Clara Street (58 South 1st Street) upon an Appeal from the City of San José Planning Commission"; and Resolution No. 78090, entitled: "A Resolution of the Council of the City of San José Approving a Conditional Use Permit to allow the Late Night Use Until 2:00 a.m. for a Public Drinking Establishment with a Maximum Occupancy of 250 People, on the First Floor of an Existing 8,684-Square Foot Tenant Space on an Approximately 0.15-Gross Acre Site Located on the East Side of South 1st Street, Approximately 400 Feet Southerly of East Santa Clara Street (58 South 1st Street), were adopted. (Noes: Carrasco, Arenas, Peralez, Liccardo.)

Adjournment

The Council of the City of San José adjourned at 10:36 p.m. in the memory of Mary Taylor, who passed away on January 5, 2017. We recognize her many contributions to San José over an exemplary 30-year career at City Hall. Her colleagues will remember, with great fondness, Sister Merree's extraordinary zest-for-life, and extend their deepest condolences to Mary's daughter, Michelle, and the Taylor Family.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC
City Clerk

rmk/2-14-17 MIN